

Mailing Date: OCT 11 2011

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR THE PENNSYLVANIA LIQUOR CONTROL BOARD

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|------------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 10-2128C |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W01-417990 |
| v. | : | |
| | : | LID - 55168 |
| MTG TAVERN INC | : | |
| 7538-40 CASTOR AVE | : | |
| PHILADELPHIA PA 19152-4002 | : | |
| | : | |
| PHILADELPHIA COUNTY | : | |
| LICENSE NO. R-AP-SS-EHF-3335 | : | |

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 12, 2010. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on August 26, 2010, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, nineteen years of age.

A hearing was held on September 13, 2011, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

At about 9:05 p.m. on August 26, 2010, a young man whose birth date was September 29, 1990, entered the licensed premises and ordered a bottle of beer from the bartender, who served it to him without questioning his age. The young man paid for the beer and then left the premises without touching it. Outside, he spoke to a liquor enforcement supervisor, who then entered the premises and informed the bartender that he had served a minor working with the Bureau under the Age Compliance program (N.T. 4-34, Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

The findings of fact are based on the testimony of a liquor enforcement officer who entered the premises five minutes before the minor and a supervisor who entered immediately after the minor left. The minor himself did not testify, because the Bureau was unable to produce him. The crucial fact – the minor’s date of birth – was supplied by Exhibit B-3, an excerpt of the records of the Pennsylvania Department of Transportation.

This record was received pursuant to 75 Pa. C.S. §6328, which provides:

The department [of transportation] may send to any authorized user by electronic transmission any certification of record or abstract of records maintained by the department. Permissible uses shall include, but not be limited to, certifications of driving records and motor vehicle records. The department may also certify electronically any documents certified to it electronically. Authorized users include State and local police, district attorneys, employees of the department and the Office of Attorney General and other persons or entities as determined by the department and listed by notice in the Pennsylvania Bulletin. In any proceeding before the courts or administrative bodies of this Commonwealth, documents certified by the department under this section and offered into evidence by an authorized user shall be admissible into evidence.

(Emphasis supplied)

PRIOR RECORD:

Licensee has been licensed since October 6, 2006, and has had prior violations as follows:

Citation No. 07-1090. \$300.00 fine.

1. Operated without a valid health permit. April 11 and 13, 2007.

Citation No. 08-2131. \$450.00 fine and verification of compliance.

1. Operated without a valid health permit. July 28, 2008.

Citation No. 09-2675. \$1,250.00 fine.

1. Loudspeakers could be heard outside. September 27 and October 11, 2009.
2. Sales on Sunday between 2:00 a.m. and 11:00 a.m. September 27, 2009.

Citation No. 10-0337. \$1,950 fine, R.A.M.P. – certification and verification mandated.

1. Sales to minors. January 8, 2010.
2. Failed to maintain business records for two years preceding January 8, 2010.
3. Operated without a valid health permit. January 8, 2010.

Citation No. 11-0192. \$250 fine.

1. Failed to obtain mandatory R.A.M.P. – certification. December 3, 2010 – July 8, 2011.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of this type. Licensee became R.A.M.P. – certified on July 8, 2011, but is not entitled to the reduced penalty because of the violation of January 8, 2010.

Since this is Licensee's third violation in a four-year period of a provision mentioned in 47 P.S. §4-471(b), the law requires that the penalty include license suspension or revocation.

ORDER

THEREFORE it is hereby ORDERED that the Restaurant Liquor License of Licensee, MTG Tavern, Inc., License No. R-AP-SS-EHF-3335, shall be suspended for a period of three (3) days BEGINNING at 7:00 a.m. on Monday, January 16, 2012, and ENDING at 7:00 a.m. on Thursday, January 19, 2012.

Licensee is directed on Monday, January 16, 2012, at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Thursday, January 19, 2012, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 6TH day of OCTOBER, 2011.



David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.